IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NOS. 19236 & 20484 OF 2007

Dated : October 12, 2007

Between:

P. Nagender Rao

Petitioner in both the Writ Petitions

AND

The Dy. Commissioner (Commercial Taxes)
Warangal Division,
Opp: MGM Hospital, Warangal and others

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 19236 & 20484 OF 2007

COMMON ORAL ORDER:
(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)

Since both these writ petitions arise out of the

common order dated 24.07.2007 made in O.A. Nos. 7264 of 2005 and 5375 of 2006 by the A.P. Administrative Tribunal, Hyderabad, they were heard together and are being disposed of by this common order.

Seeking a writ of certiorari calling for the record relating to the common order dated 24.07.2007 made in O.A. Nos. 7264 of 2005 and 5375 of 2006 by the A.P. Administrative Tribunal, Hyderabad, and to quash the same, these writ petitions are filed.

The first respondent herein filed O.A. No. 7264 of 2005 before the Tribunal to direct the official respondents herein to consider his case for promotion as Assistant Excise Superintendent and also Excise Superintendent for the panel year 2002-2003 by conducting regular Departmental Promotion Committee and also in view of the adequacy of Schedule Castes as per GO Ms. No. 5dated 14.2.2003. The other OA No. 5375 of 2005 was filed assailing the Proc. CR. No. 13459/04/CPE/L-1 dated 6.6.2006 by which it was found by the Screening Committee that the first respondent herein does not come within the zone of consideration with reference to his seniority.

The petitioner herein is respondent No.8 in O.A. No. 5375 of 2006. According to the petitioner, the first respondent, who is a promotee to the post of Prohibition & Excise Inspector, Kakinada Nodal Division, who belongs

to the Scheduled Caste community, initially filed OA No. 7264 of 2005 seeking a direction for his promotion to the post of Asst. Excise Superintendent and thereafter to the post of Excise Superintendent following the rule of reservation in terms of GO Ms. No. 5 dated 15.2.2003 and GO Ms. No.21 dated 16.3.2003, as directed by the Tribunal in OA No. 778 of 2004 and also sought a direction that his case be considered for promotion as Assistant Excise Superintendent and Excise Superintendent in terms of GO Ms. No. 5163 dated 17.8.2005 and GO Ms. No. 1573 and 1574 dated 20.8.2005. The Tribunal passed interim orders therein directing the respondent to consider his case for promotion, if he is otherwise eligible, which was negated in view of the fact that the first respondent did not come within the zone of consideration, in view of his seniority among the Scheduled Castes candidates in the Cadre of Prohibition & Excise Superintendent, by order dated 6.6.2006. Assailing the same, the OA No. 5375 of 2006 was filed seeking a direction to consider his case in place of one Mr. P.Surya Rao, a Scheduled Caste candidate promoted as Assistant Excise Superintendent by setting aside the said proceedings following the rule of reservation in promotions from the panel of 2002-2003 onwards.

The case of the third respondent before the Tribunal,

as can be seen from the counter affidavit, is that the first respondent was promoted as Excise Inspector on 4.2.1989 temporarily on the condition that in the event of direct recruits joining duty, he has to make place for them. While so, pursuant to the orders of the third respondent, in appellate orders dated 24.5.2002, the Deputy Commissioner of Prohibition & Excise, Kakinda, issued provisional seniority list dated 21.12.2006 for the panel year 1988-89 and the name of the first respondent is shown as Sl.No.132 and three other Excise Inspectors were shown at Sl. No. 80, 84 and 100 belonging to the Scheduled Caste. Since the Rule of Reservation came into effect from 14.2.2003 with prospective effect, the case of the first respondent was placed before the Screening Committee for the panel year 2005-2006. It is further their case that the services of one Mr.P.Surya Rao were regularized with effect from 25.1.1991 and though the first respondent was promoted on 4.2.1989, his promotion being temporary in the vacancy meant for direct recruits, he is not entitled for regularization of services.

The case of Mr. P. Surya Rao, against whom relief was sought by the writ petitioner herein in the Tribunal, is that, he is senior to the petitioner and was promoted in a regular vacancy meant for direct recruits and that his promotion to the post of Assistant Prohibition & Excise Superintendent from Multi-zone I is valid.

The Tribunal, on an exhaustive consideration of the issue, allowed both the O.As. declaring that the first respondent was promoted on 4.2.1989 in the category of promotees only and not direct recruits slot and also declared that the first respondent is eligible for promotion under the roster point No.7, reserved for Scheduled Caste in Multi-zone-I for the post of Assistant Prohibition & Excise Superintendent, inasmuch as he is senior to the said Sri P.Surya Rao and, therefore, the promotion of said Mr. P.Surya Rao in roster No.7 instead of first respondent is not correct and, thus, directed the respondents to consider the case of the first respondent for promotion as Assistant Prohibition & Excise Superintendent from Multi-Zone-I under Roster No.7 reserved for Schedule Caste candidates on the basis of seniority, if he is otherwise eligible for promotion.

Aggrieved thereby, the 8th respondent in the above O.A. filed the present writ petitions inter alia contending that by virtue of the impugned order, all the direct recruits of 1995 Batch would be pushed down to the promotees of 1989 and the petitioner would be pushed down to eighth place. It is further contended that the Tribunal should have directed the Government to follow the Rule of Reservation in promotion so as to represent adequate representation of Scheduled Caste community in the promotional cadre. It is also contended that the petitioner – a direct recruit of

1995 batch is deprived of the promotional post inasmuch as the respondent No.1 – vacate petitioner has occupied the post meant for direct recruits and, therefore, the order impugned is unsustainable in law.

This court while issuing rule nisi on 13.09.2007 ordered *status quo* to be maintained as on that date. Now the first respondent in the writ petition i.e. the applicant in the O.As. filed vacate stay petition inter alia contending that the writ petitioner had not even born on the cadre inasmuch as the vacate petitioner was promoted in February, 1989 in a vacancy meant for promotees and his services were also regularized much before the date on which the vacate petitioner was born on cadre. It is further contended that the Tribunal has held that the vacate petitioner was promoted in a vacancy meant for promotees and the writ petitioner was a direct recruit of 1995 batch. Therefore, for these reasons the question of the vacate petitioner occupying one of the promotional post meant for direct recruits does not arise and in that view of the matter, the writ petitioner has no locus standie to question the promotion of the vacate petitioner – respondent No.1 in these writ petitions.

The Tribunal, adverting to these rival contentions, considered the issue in extenso and observed that out of 31 total substantive vacancies, 18 vacancies go to promotees being 60% and 13 vacancies go to direct

recruits being 40% and held that the first respondent – vacate petitioner was promoted within that 18 vacancies, after perusal of the original file of promotions of the year 1989 and consequently held that he is senior to the direct recruits of 1995 Batch viz., the writ petitioner.

It is obvious that the vacate petitioner was promoted as Prohibition and Excise Inspector on 4.2.1989 in the vacancy meant for promotees and his regularization in the said category with effect from 4.2.1989 and declaration of probation with effect from 21.5.1990 is valid, whereas the writ petitioner was a direct recruit in the year 1995 and, thus, he was not even born on the cadre to be considered for promotion on par with the vacate petitioner. Having considered the respective submissions of the parties, we have no hesitation in coming to the conclusion that the Tribunal is perfectly justified in directing the respondents to consider the case of the applicant – vacate petitioner for the promotion to the post of Assistant Prohibition & Excise Superintendent from Multi-Zone-I, under Roster Point No.7, reserved for Scheduled Caste candidates on the basis of seniority. Therefore, we do not see any justifiable ground to interfere with the impugned order. Consequently, the writ petitions fail and are accordingly dismissed. No order as to costs.

T.MEENA KUMARI, J.

G.CHANDRAIAH, J.

October 12, 2007
MAS